

Message

From: Kazempoor, Kelly [kazempoor.kelly@epa.gov]
Sent: 7/19/2019 7:20:25 PM
To: AO OPA OMR CLIPS [AO_OPA_OMR_CLIPS@epa.gov]
Subject: Daily News Clips 7/19/19

Chlorpyrifos

Vanity Fair: TRUMP'S EPA WON'T BAN PESTICIDE LINKED TO BRAIN DAMAGE IN KIDS

The Hill: EPA allows continued use of pesticide linked with brain damage

Washington Post: EPA will not ban use of controversial pesticide linked to children's health problems

CNN: EPA refuses to ban pesticide tied to children's health problems

Newsweek: WHAT IS CHLORPYRIFOS? DONALD TRUMP'S EPA SAYS IT WON'T BAN CONTROVERSIAL PESTICIDE LINKED TO BRAIN DEVELOPMENT PROBLEMS IN CHILDREN

USA Today: EPA green lights use of pesticide linked to brain damage in children

New York Times: E.P.A. Won't Ban Chlorpyrifos, Pesticide Tied to Children's Health Problems

E&E Daily: EPA won't ban chlorpyrifos

Bloomberg Environment: EPA Says It Won't Ban Pesticide Chlorpyrifos (2)

Politico: EPA keeps chlorpyrifos on fields, for now

PFAS

Bloomberg Environment: New Hampshire Slashes Amount of 'Forever' Chemicals Allowed

Cannabis

Bloomberg Environment: States Want Pot to Grow Greener as Legal Cannabis Expands

Energy

Greenwire: Refiners: Cutting ethanol mandate won't hurt corn farmers

Washington Post: The Energy 202: EPA's new 'no surprises' inspection policy has some critics worried

Science Advisory Committees

Bloomberg Environment: EPA Advisory Board Dispute Ready for Court, Scientist Group Says

The Hill: Science committee chair threatens EPA over 'stonewalled' answers to lawmakers

Government Executive: EPA Failed to Ensure Outside Advisers Don't Have Conflicts of Interest

Mining

Bloomberg Environment: EPA Wasn't Required to Issue Hardrock Mining Rule: D.C. Cir. (2)

Politico: Court sides with EPA in mining financial assurance dispute

Greenwire: D.C. Circuit yields to EPA on hardrock mine bonding

EPA Staff

The Daily Signal: EPA Administrator Explains What's Changed at the Agency Since the Obama Years

Greenwire: Policy aide heads to utility

Waste

Greenwire: Wheeler objects to limits on sending U.S. waste abroad

Greenwire: Wheeler announces \$2M for cleanup projects

Air

Breitbart: EPA: Air Quality Improvement Report is an 'Untold Environmental Success Story'

Chlorpyrifos

Vanity Fair

TRUMP'S EPA WON'T BAN PESTICIDE LINKED TO BRAIN DAMAGE IN KIDS

<https://www.vanityfair.com/news/2019/07/donald-trump-epa-chlorpyrifos>

BY BESS LEVIN

In a normal universe, like the one we inhabited until January 20, 2017, it would be considered a no-brainer to outlaw the use of a pesticide linked to neurological damage in children. That's why, in 2015, the Obama administration proposed to revoke all uses of chlorpyrifos, exposure to which studies had shown led to lower birth weight and reduced IQ, among a host of harmful effects. Then Trump became president and, well you can probably guess where this is going:

...before the ban was finalized, President Trump took office and reversed course.... In a notice to the Federal Register on Thursday, the Environmental Protection Agency wrote that "critical questions remained regarding the significance of the data" that suggests that chlorpyrifos causes neurological damage in young children. The agency said that the Obama administration's decision to ban the product—used on more than 50 crops, including grapes, broccoli, and strawberries—was based on epidemiological studies rather than direct tests on animals, which have historically been used by the EPA to determine a pesticide's safety. The EPA's decision, which represented a win for industry, drew swift condemnation from groups that have pushed for years to remove the pesticide from the market.

Presumably, one of the groups extremely happy with the decision was Dow Chemical, which sells approximately 5 million pounds of chlorpyrifos in the U.S. each year, according to the Associated Press, and wasn't about to let one of its biggest moneymakers get banned; in 2017, per the AP, Dow and two other companies that manufacture chlorpyrifos sent letters to the EPA, the Department of Commerce, and the Fish and Wildlife Service, asking them to "set aside" the results of studies indicating harmful effects, claiming that they were "fundamentally flawed." They even hired scientists to "produce a lengthy rebuttal to the government studies." Oh, and don't forget that Dow donated \$1 million to underwrite Trump's inaugural festivities, though anyone even entertaining the idea that the seven-figure check was intended to grease the administration's wheels should put a sock in it. Rachele Schikorra, Dow's director of public affairs, told the AP at the time that any such suggestion was "completely off the mark."

The administration's move to keep chlorpyrifos on the market comes as states like California and New York have taken steps to ban the pesticide outright. In May, California health officials said they did so in light of strong evidence that it "causes serious health effects in children and other sensitive populations at lower levels of exposure than previously understood."

WATCH NOW:

Emily Ratajkowski and Theo James Review Art Heist Movies

"Today's decision is shameful," Kristin Schafer, executive director of the Pesticide Action Network, told the Washington Post. "It flies in the face of decades of strong scientific evidence, and the recommendations of the agency's own scientists. This administration is putting children, workers and rural families across the country at continued risk for no good reason, and we will continue to press for a full federal ban of this dangerous chemical. This administration has made perfectly clear who they are working for."

The Hill

EPA allows continued use of pesticide linked with brain damage

<https://thehill.com/policy/energy-environment/453777-epa-allows-continued-use-of-pesticide-linked-with-brain-damage>

BY REBECCA BEITSCH AND MIRANDA GREEN

The Environmental Protection Agency (EPA) will not halt a pesticide linked with brain damage from being sprayed on crops, the agency said Thursday in response to a lawsuit.

Chlorpyrifos, known on the market as Lorsban, is used on a wide variety of crops, including corn and cranberries, and farmers often call it a last line of defense against certain insects.

A federal appeals court in April gave the EPA 90 days to decide how to deal with the pesticide.

Environmental groups have long contended it's dangerous and have spent years suing the EPA to end its agricultural use. Studies have linked chlorpyrifos to learning and memory issues and prolonged nerve and muscle stimulation.

In a statement to The Hill, the EPA said the groups challenging chlorpyrifos's use did not have enough data to demonstrate the product is not safe. The EPA said it would continue to review the safety of chlorpyrifos through 2022.

Chlorpyrifos has already been banned for household use and seemed on track to be phased out more broadly, but that shifted under the Trump administration.

A month after former EPA Administrator Scott Pruitt began leading the department, the agency rejected an Obama-era recommendation from agency scientists to ban the widely used pesticide.

In the absence of EPA action, some states have moved to regulate chlorpyrifos on their own. Hawaii in 2018 banned the use of the pesticide across the state. California and New York are considering a similar move.

California, the nation's top agricultural state, said it was obligated to take action due to research showing chlorpyrifos hinders brain development in children.

Farmers and other groups have urged the EPA to keep chlorpyrifos available.

"Without the ability to use chlorpyrifos, entire production fields could be lost," the American Seed Trade Association wrote in a letter to the agency in 2017.

In April, Sen. Kirsten Gillibrand (N.Y.), one of the Democrats vying for the 2020 presidential nomination, introduced a bill to restrict schools from serving meals that include fruits and vegetables sprayed with chlorpyrifos.

"As a mother of two young sons, it's alarming that the food in school meals could contain even a trace of a chemical that could harm students' development and ability to learn," Gillibrand, who sits on the Senate Agriculture Committee, said in a statement at the time.

Environmental groups knocked the agency's decision Thursday.

"By allowing chlorpyrifos to stay in our fruits and vegetables, Trump's EPA is breaking the law and neglecting the overwhelming scientific evidence that this pesticide harms children's brains," said Patti Goldman, an attorney for Earthjustice. "It is a tragedy that this administration sides with corporations instead of children's health."

The organizations that originally brought the challenge to EPA on the rule said they will continue to fight the decision.

"Every day we go without a ban, children and farm workers are eating, drinking and breathing a pesticide linked to intellectual and learning disabilities and poisonings," said the 12 plaintiff organizations that challenged the 2017 decision.

"We will continue to fight until chlorpyrifos is banned and children and farm workers are safe from this dangerous chemical."

Washington Post

EPA will not ban use of controversial pesticide linked to children's health problems

https://www.washingtonpost.com/climate-environment/2019/07/18/epa-will-not-ban-use-controversial-pesticide-linked-childrens-health-problems/?utm_term=.c12ce6533aa2

By Brady Dennis

The Environmental Protection Agency rejected a petition by environmental and public health groups Thursday to ban a widely used pesticide that has been linked to neurological damage in children, even though a federal court said last year there was “no justification” for such a decision.

In a notice to the Federal Register on Thursday, the agency wrote that “critical questions remained regarding the significance of the data” that suggests that chlorpyrifos causes neurological damage in young children. The agency said that the Obama administration’s decision to ban the product — used on more than 50 crops, including grapes, broccoli and strawberries — was based on epidemiological studies rather than direct tests on animals, which have historically been used by the EPA to determine a pesticide’s safety.

The EPA’s decision, which represented a win for industry, drew swift condemnation from groups that have pushed for years to remove the pesticide from the market.

“By allowing chlorpyrifos to stay in our fruits and vegetables, Trump’s EPA is breaking the law and neglecting the overwhelming scientific evidence that this pesticide harms children’s brains,” Patti Goldman, an attorney for the environmental law organization Earthjustice, said in a statement. “It is a tragedy that this administration sides with corporations instead of children’s health.”

Still, the decision to deny the petition could bring the country closer to final resolution of a decades-long battle over a pesticide used on fruits, vegetables and cereals that Americans eat every day. Kevin Minoli, a partner at the Alston & Bird law firm, said agency critics can now challenge the EPA’s conclusion that the pesticide is safe. He noted that judges on the U.S. Court of Appeals for the 9th Circuit have already indicated “they have significant concerns about the safety of chlorpyrifos.”

“This is the entry ticket to the actual main event,” said Minoli, who served in the EPA’s Office of General Counsel under multiple Republican and Democratic administrations. “This is the end of the road.”

The Obama administration had proposed in 2015 to revoke all uses of chlorpyrifos after EPA scientists determined that existing evidence did not meet the agency’s threshold of a “reasonable certainty of no harm,” given exposure levels in Americans’ food supply and drinking water. EPA staffers cited studies of families exposed to it in apartment buildings and agricultural communities that found lower birth weight and reduced IQ, among other effects.

But before the ban was finalized, President Trump took office and reversed course.

In March 2017, then-EPA Administrator Scott Pruitt rejected the agency’s own analysis, saying the agency would reassess the science underpinning that decision and make a final determination in 2022. That action, welcomed by the pesticide industry and Agriculture Department officials who had questioned the EPA’s findings, led to the latest court fight.

Farmers have pressed to keep chlorpyrifos, which has long been banned from indoor use, available for use on crops.

John Chandler, a fourth-generation farmer in Selma, Calif., grows peaches, plums, almonds, citrus and grapes for raisins and wine on his property. He said his operation uses chlorpyrifos on rare occasions, such as during an outbreak of the vine mealybug on grape crops.

"It's kind of the last resort," Chandler said, adding that his family works to minimize their employees' exposure to the pesticide. "We train our workers very diligently on proper procedures."

The industry welcomed the EPA's decision Thursday, even as manufacturers of the pesticide acknowledged that its approved uses could change over time as researchers gather more data. Gregg Schmidt, a spokesman for Corteva Agriscience, the pesticide's main manufacturer, said the company supports "critical uses of chlorpyrifos" while the EPA continues to review the pesticide and the scientific data around it.

"We are committed to working with the agency as it seeks to make an accurate assessment and, if necessary, reduce potential exposures, while also ensuring that growers for whom chlorpyrifos is a critical tool can continue to use the product safely," Schmidt said in a statement.

Chris Novak, chief executive of the industry group CropLife America, said farmers and public health officials still rely on chlorpyrifos to control a number of "deadly and debilitating" pests, including mosquitoes. He added that the group supports funding to ensure that the EPA has adequate resources to test and regulate chlorpyrifos and other pesticides.

The EPA said in a statement Thursday that it plans to expedite a review of chlorpyrifos, "which should be completed well before the 2022 statutory deadline." The agency also acknowledged it was in discussions with makers of the pesticide that "could result in further use limitations."

The Trump administration's decision to keep the pesticide on the market comes as some major states — including California and New York — have taken steps to ban chlorpyrifos outright.

California health officials said in May that their decision came amid growing evidence that the pesticide "causes serious health effects in children and other sensitive populations at lower levels of exposure than previously understood." California Gov. Gavin Newsom (D) proposed \$5.7 million to support the transition to "safer, more sustainable alternatives," according to the California Environmental Protection Agency.

California's proposed ban is expected to take six months to two years to take full effect and comes as other states have started taking similar action. Last year, Hawaii became the first state to ban pesticides containing chlorpyrifos, though that ban will not take effect until 2022. New York state lawmakers recently approved legislation to ban the pesticide by Dec. 1, 2021. Oregon, Connecticut and New Jersey also are considering measures to take chlorpyrifos off the market.

Chlorpyrifos has been used for a half-century on a wide array of crops and in virtually every corner of the country. But as evidence has grown over time about its potential health risks, the government has scaled back its use.

Beginning in 2000, companies making chlorpyrifos entered into an agreement with the EPA to phase out residential use of the chemical, aside from a handful of exceptions, such as in ant and roach baits sold in child-resistant packaging. Two years later, the EPA put in place additional label changes aimed at protecting agricultural workers, as well as fish, other wildlife and water sources near where it is sprayed.

But all that stopped short of banning chlorpyrifos in agriculture altogether — an outcome that advocates argue is long overdue.

"Today's decision is shameful," Kristin Schafer, executive director of the Pesticide Action Network, said in an email. "It flies in the face of decades of strong scientific evidence, and the recommendations of the agency's own scientists. This administration is putting children, workers and rural families across the country at continued risk for no good reason, and we will continue to press for a full federal ban of this dangerous chemical. This administration has made perfectly clear who they are working for."

CNN

EPA refuses to ban pesticide tied to children's health problems

<https://www.cnn.com/2019/07/18/politics/epa-chlorpyrifos/index.html>

By Gregory Wallace and Ellie Kaufman, CNN

Washington (CNN)The Environmental Protection Agency has decided against a ban of the widely-used pesticide chlorpyrifos, which critics say is associated with neurological problems in children.

The agency concluded there is not sufficient evidence of the chemical's dangers to justify the ban requested by environmental groups and a group of states. Those groups cast the decision as another example of the Trump administration siding with industry.

"EPA has determined that their objections must be denied because the data available are not sufficiently valid, complete or reliable to meet petitioners' burden to present evidence demonstrating that the tolerances are not safe," the agency said in a statement Thursday.

Critics say science shows chlorpyrifos is associated with neurological conditions in farm workers and their children.

The agency banned chlorpyrifos for household uses in 2000, but allowed agricultural producers to continue using it. That decision has been challenged through petitions and in the courts since 2007. Last summer, a federal court ordered the EPA to review the petition, and after a review of that decision, the agency was given 90 days in April to make a determination, culminating in Thursday's decision.

"By allowing chlorpyrifos to stay in our fruits and vegetables, Trump's EPA is breaking the law and neglecting the overwhelming scientific evidence that this pesticide harms children's brains," said attorney Patti Goldman of Earthjustice, who represents the groups that took the issue to court.

The chemical's producer, Corteva Agriscience -- previously Dow AgroSciences -- did not immediately respond to a request for comment.

The EPA said it will continue an ongoing review of chlorpyrifos and make its next determination about the pesticide by 2022. That review "could result in further use limitations affecting the outcome of EPA's assessment," its statement said. The agency is required by law to periodically review chemicals.

Newsweek

WHAT IS CHLORPYRIFOS? DONALD TRUMP'S EPA SAYS IT WON'T BAN CONTROVERSIAL PESTICIDE LINKED TO BRAIN DEVELOPMENT PROBLEMS IN CHILDREN

<https://www.newsweek.com/chlorpyrifos-donald-trump-epa-controversial-pesticide-brain-problems-children-1450154>

BY ARISTOS GEORGIU

The Environmental Protection Agency (EPA) has announced it will not ban a controversial but commonly used pesticide, dismissing previous proposals from its own scientists who highlighted research linking the chemical to health problems in children.

The chemical, known as chlorpyrifos, belongs to a class of pesticides known as organophosphates, which are used on more than 50 different crops, including corn, various fruit trees and soybeans, Mother Jones reported.

According to some recent studies, there is evidence to suggest that being exposed to low doses of the chemical in the womb can lead to developmental problems in the brain, potentially resulting in lower IQs or disorders such as ADD and autism (although it should not be noted that such research is not without its limitations, in part, because it does not prove causal links.)

People can be exposed to the chemical through ingestion of food containing the insecticide, or less commonly, through inhalation of contaminated air or absorption through the skin, Fact Check reported. In 2000, the EPA banned the substance in the home due to the potential links to developmental problems in children.

And in 2015, the agency proposed to ban the chemical outright under the Obama administration because it was "unable to conclude that the risk from aggregate exposure from the use of chlorpyrifos meets the safety standard."

But in 2017, the EPA administrator at the time, Scott Pruitt, reversed the decision saying: "We need to provide regulatory certainty to the thousands of American farms that rely on chlorpyrifos, while still protecting human health and the environment. By reversing the previous Administration's steps to ban one of the most widely used pesticides in the world, we are returning to using sound science in decision-making—rather than predetermined results."

This reversal initiated a number of legal challenges with a federal appeals court ruling in April that the EPA had to decide by July this year whether or not to ban the substance, The New York Times reported.

Now, current EPA administrator Andrew Wheeler has announced that the ban will not come into effect, according to a statement.

"After reviewing the objections, EPA has determined that the objections related to Petition claims regarding neurodevelopmental toxicity must be denied because the objections and the underlying Petition are not supported by valid, complete, and reliable evidence sufficient to meet the Petitioners' burden under the The United States Federal Food, Drug, and Cosmetic Act, as set forth in EPA's implementing regulations," the statement read.

The latest decision has been criticized by Patti Goldman, a lawyer for the environmental group Earthjustice which initiated a legal challenge against the EPA in 2017 over Pruitt's decision to reverse the Obama era proposals.

"By allowing chlorpyrifos to stay in our fruits and vegetables, Trump's EPA is breaking the law and neglecting the overwhelming scientific evidence that this pesticide harms children's brains," Goldman said in a statement.

USA Today

EPA green lights use of pesticide linked to brain damage in children

<https://www.usatoday.com/story/news/health/2019/07/18/epa-chlorpyrifos-pesticide-brain-damage/1773300001/>

Ellen Knickmeyer, Associated Press

WASHINGTON – The Environmental Protection Agency rejected a key legal challenge Thursday to a pesticide linked to brain damage in children, saying environmental groups had failed to prove that a ban was warranted.

The agency's defense of continued use of the widely used bug-killer chlorpyrifos could set the stage for a pivotal federal court decision on whether to overrule the EPA and force the agency to ban it.

"To me, this starts the clock on the use of chlorpyrifos on food crops in the US," said former senior EPA attorney Kevin Minoli.

Scientists say studies have shown that chlorpyrifos damages the brains of fetuses and children. The pesticide has been used nationally on dozens of food crops, but California – the nation's largest agricultural state – and a handful of other states have recently moved to ban it.

Family pushed for death penalty: Illinois man gets life in prison for brutal rape and killing of Chinese scholar

The agency said the environmental groups had failed to prove that the pesticide wasn't safe.

Last summer, a three-judge panel of the 9th Circuit Court of Appeals ordered the EPA to ban all sales of the pesticide. The court decided to reconsider that ruling with a slate of 11 judges, who gave the EPA until this month to respond to the environmental groups' arguments for banning chlorpyrifos.

The EPA under the Obama administration had initiated a ban, but the agency reversed that decision shortly after President Donald Trump took office.

The EPA defense Thursday showed that “as long as the Trump administration is in charge, this EPA will favor the interests of the chemical lobby over children’s safety,” said Ken Cook, head of the Environmental Working Group environmental advocacy organization.

In a statement, the EPA said it was separately speeding up a regular agency review of the pesticide’s continued use, and expected a decision on that well ahead of a 2022 deadline.

The EPA said it also was talking with chlorpyrifos makers about further restrictions on how farmers use the pesticide.

New York Times

E.P.A. Won’t Ban Chlorpyrifos, Pesticide Tied to Children’s Health Problems

<https://www.nytimes.com/2019/07/18/climate/epa-chlorpyrifos-pesticide-ban.html>

By Lisa Friedman

WASHINGTON — The Trump administration took a major step to weaken the regulation of toxic chemicals on Thursday when the Environmental Protection Agency announced that it would not ban a widely used pesticide that its own experts have linked to serious health problems in children.

The decision by Andrew R. Wheeler, the E.P.A. administrator, represents a victory for the chemical industry and for farmers who have lobbied to continue using the substance, chlorpyrifos, arguing it is necessary to protect crops.

It was the administration’s second major move this year to roll back or eliminate chemical safety rules. In April, the agency disregarded the advice of its own experts when officials issued a rule that restricted but did not ban asbestos, a known carcinogen. Agency scientists and lawyers had urged the E.P.A. to ban asbestos outright, as do most other industrialized nations.

In making the chlorpyrifos ruling, the E.P.A. said in a statement that the data supporting objections to the use of the pesticide was “not sufficiently valid, complete or reliable.” The agency added that it would continue to monitor the safety of chlorpyrifos through 2022.

What on Earth Is Going On?

Sign up for our weekly newsletter to get our latest stories and insights about climate change — along with answers to your questions and tips on how to help.

The substance, sold under the commercial name Lorsban, has already been banned for household use but remains in widespread use by farmers for more than 50 fruit, nut, cereal and vegetable crops. In 2016, more than 640,000 acres were treated with chlorpyrifos in California alone.

Representatives of Corteva Agriscience, the maker of chlorpyrifos, did not immediately respond to a request for comment on the decision.

The Obama administration announced in 2015 that it would ban chlorpyrifos after scientific studies produced by the E.P.A. showed the pesticide had the potential to damage brain development in children. That ban had not yet come into force when, in 2017, Scott Pruitt, then the administrator of the E.P.A., reversed that decision, setting off a wave of legal challenges.

Those lawsuits culminated in April when a federal appeals court ordered the E.P.A. to issue a final ruling on whether to ban chlorpyrifos by this month.

Patti Goldman, a lawyer for Earthjustice, an environmental group that brought a legal challenge against the E.P.A.'s 2017 decision on behalf of farmworker organizations and others, criticized the decision. She said groups would sue again and ask the United States Court of Appeals for the Ninth Circuit to expedite the case.

"By allowing chlorpyrifos to stay in our fruits and vegetables, Trump's E.P.A. is breaking the law and neglecting the overwhelming scientific evidence that this pesticide harms children's brains," Ms. Goldman said in a statement.

Representatives of the chemical industry expressed satisfaction with the decision. "The availability of pesticides, like chlorpyrifos, is relied upon by farmers to control a variety of insect pests and by public health officials who work to control deadly and debilitating pests like mosquitoes," Chris Novak, chief executive of CropLife America, said in a statement.

Hawaii banned chlorpyrifos in 2018. California and New York are considering similar actions. The European Commission is under pressure from consumers and environmental groups to ban the pesticide.

The Trump administration has issued several other decisions in recent months relaxing environmental regulations. This week, the E.P.A. acknowledged a new policy doing away with surprise inspections of chemical and power plants. The "no surprises" policy is aimed at fostering better working relationship between the agency and states, E.P.A. officials wrote.

Last week, the E.P.A. approved broad use of the pesticide sulfoxaflor, which is known to harm bees. And this year the agency announced curbs on a lethal chemical found in paint-stripping products that represented a weakening of a ban that the Obama administration proposed.

Editors' Picks

Don't Scoff at Influencers. They're Taking Over the World.

LeBron James Jr. Is 14. He Already Draws Curious Crowds.

I Wanted to Know What White Men Thought About Their Privilege. So I Asked.

President Trump's Retreat on the Environment Is Affecting Communities Across AmericaDec. 26, 2018

83 Environmental Rules Being Rolled Back Under TrumpJune 2, 2019

Senator Tom Udall, Democrat of New Mexico, who introduced legislation to ban chlorpyrifos nationwide, said there was "no excuse" for keeping chlorpyrifos in use.

"The science on chlorpyrifos is clear and unambiguous," he said. "It damages the developing brains of children and causes serious health problems in those who have been exposed to it."

The E.P.A. decision is also one of the first concrete results of a separate Trump administration effort to restrict the use of scientific studies involving human subjects.

Under Mr. Pruitt, the agency proposed a rule saying it could not consider scientific research unless the raw data behind it was made public, saying the issue was a matter of transparency. Scientists argued that studies measuring human exposure to pesticides and other chemicals often rely on confidential health information and argued the E.P.A.'s real motivation was to restrict the ability to develop regulations.

In opting not to ban chlorpyrifos, the E.P.A. rejected a major study conducted by Columbia University on its effects on children in New York City. The E.P.A. said because it was unable to obtain the raw data and replicate that study, which linked the insecticide to developmental delays, it could not independently verify the conclusions.

Angela Logomasini, a senior fellow at the Competitive Enterprise Institute, a free-market think tank that rejects the established science of climate change, expressed strong support for the decision. She called the E.P.A.'s Science Advisory Panel decision on which the original ban was based "junk science."

Kevin Minoli, a former senior E.P.A. lawyer who is now a partner at the Washington law firm Alston & Bird, predicted the courts would ultimately ban chlorpyrifos. He called Thursday "the beginning of the end" for the chemical.

The E.P.A. may argue that the science showing chlorpyrifos is unsafe is unclear. But Mr. Minoli said under the Food Quality Protection Act, the E.P.A. must prove that there was a reasonable certainty that the pesticide would not cause harm.

"Whatever you think about the science, there's at least a question about that," Mr. Minoli said.

E&E Daily

EPA won't ban chlorpyrifos

<https://www.eenews.net/eenewspm/stories/1060757401/search?keyword=EPA>

Ariana Figueroa, E&E News reporter

EPA today said it will not ban use of the pesticide chlorpyrifos on crops, a move that likely will spark more legal challenges from health and farmworker advocates.

Alexandra Dunn, who leads the agency's chemicals office, published a pre-notice saying EPA will send to the Federal Register an official order denying a petition to ban the chemical.

Last year, the 9th U.S. Circuit Court of Appeals ordered EPA to reverse a Trump administration decision to halt an Obama-era plan to ban the pesticide nationwide. The Trump administration appealed that ruling, and in April, the court gave EPA 90 days to review and respond to comments filed by environmentalists, farmworker groups and other activists (Greenwire, March 26).

That 90-day period ended today.

In a statement to E&E News, EPA said the challenge to its reversal "must be denied because the data available are not sufficiently valid, complete or reliable to meet petitioners' burden to present evidence demonstrating that the tolerances are not safe."

The agency said it will continue reviewing the safety of the pesticide through 2022.

Chlorpyrifos is used on produce such as strawberries, apples, corn and citrus. EPA's own science has linked the pesticide to neurological problems in children, and the agency banned the use of chlorpyrifos in residential use about 20 years ago.

"By allowing chlorpyrifos to stay in our fruits and vegetables, Trump's EPA is breaking the law and neglecting the overwhelming scientific evidence that this pesticide harms children's brains," Patti Goldman, an Earthjustice attorney representing farm, labor and environmental groups opposed to EPA's decision, said in a statement today. "It is a tragedy that this administration sides with corporations instead of children's health."

Iris Figueroa, an attorney at Farmworker Justice, said EPA's decision will continue to harm farmworkers who are either exposed to the chemicals when picking produce or mixing the pesticides for use.

"Agriculture communities are continuing to be exposed to that pesticide the agency two decades ago found dangerous for residents to use," she said.

States, meanwhile, have moved ahead of EPA to ban the pesticide. Hawaii Gov. David Ige (D) signed a bill banning a complete use of chlorpyrifos by 2023.

New York's Legislature passed a bill to ban the use of all chlorpyrifos, but Gov. Andrew Cuomo (D) has not yet signed it into law.

California is moving forward with a plan to ban the pesticide by canceling its registration and funding research to develop "safer, more sustainable alternatives" (Greenwire, May 9).

Bloomberg Environment

EPA Says It Won't Ban Pesticide Chlorpyrifos (2)

<https://news.bloombergenvironment.com/environment-and-energy/epa-says-it-wont-ban-pesticide-chlorpyrifos>

Adam Allington

The Environmental Protection Agency has decided not to ban the pesticide chlorpyrifos.

The agency's July 18 decision came the same day as a court-imposed deadline to respond to the merits of a lawsuit from a coalition of environmental and farmworker groups.

"EPA has determined that their objections must be denied because the data available are not sufficiently valid, complete or reliable to meet petitioners' burden to present evidence demonstrating that the tolerances are not safe," the agency said in a statement.

Introduced by Dow Chemical (now Corteva Agriscience) in 1965, chlorpyrifos is among the most widely used insecticides for a number of crops including corn, soybeans, broccoli, fruits, and nuts. It is also used at golf courses and other non-agricultural places. Dow voluntarily withdrew the insecticide for household use in 2000.

Lightning Rod

The EPA's decision to permit continued use of chlorpyrifos will likely land the agency back in court soon.

Chlorpyrifos has become a lightning rod for criticism from public health organizations that point to a number of studies linking early childhood exposure to organophosphates like chlorpyrifos to cognitive delays and alterations of brain structure.

"By allowing chlorpyrifos to stay in our fruits and vegetables, Trump's EPA is breaking the law and neglecting the overwhelming scientific evidence that this pesticide harms children's brains," said Patti Goldman, an attorney with Earthjustice, who served as co-counsel for the petitioners.

The Obama administration proposed in 2015 to revoke all uses of the pesticide. In March 2017, former EPA Administrator Scott Pruitt called for a reassessment.

That June, the League of United Latin American Citizens (LULAC) and other petitioners sued the EPA. They argued that under the Federal Food, Drug, and Cosmetic Act, the EPA is obliged to remove any pesticide from the market if residues of that chemical pose a risk to human health.

The U.S. Circuit Court of Appeals for the Ninth Circuit agreed with the petitioners in August 2018 and ordered the EPA to revoke all food tolerances and cancel all registrations for chlorpyrifos.

But the court in February granted the EPA's request for a rehearing of the case before the court's full panel of 11 judges. After the rehearing, the panel directed the EPA to issue "a full and fair decision" on LULAC's objections within 90 days.

Causes for Concern

Chlorpyrifos was originally developed as an alternative to the pesticide DDT, which itself was a substitute for lead arsenate.

In recent years, researchers at Columbia University found that children who were exposed to chlorpyrifos in the womb exhibited a number of neurodevelopmental problems years after being exposed, such as poorer reflexes, higher risks of attention deficit hyperactivity disorder, or ADHD, and other developmental disorders.

Another team of researchers from University of California, Berkeley, found that 87% of umbilical cord blood samples tested from newborn babies contained detectable levels of the pesticide.

"Scientists have repeatedly made it clear that chlorpyrifos is linked to long-term harm to kids' brains. But the Trump administration just keeps thumbing its nose at the science," said Erik Olson, senior director for health and food at the Natural Resources Defense Council.

"Our leaders have a responsibility to protect our most vulnerable residents—our kids—but this administration chooses instead to protect its deep-pocketed allies in the chemical industry," he said. "Until EPA gets this stuff out of our fields and off our food, this fight is not over."

In a statement, Corteva said it supports the EPA's decision, pointing to "more than 4,000 studies and reports examining the product in terms of health, safety and the environment."

"Completion of Registration Review will provide needed certainty to growers who rely on chlorpyrifos and needed reassurance for the public that labelled uses will not pose unacceptable risk to public health or the environment," Corteva said.

State Bans

A number of states, including California, Hawaii, and New York have announced plans to either phase out or ban the chemical entirely in the coming years. Canada is currently considering a near-total ban on agricultural uses of chlorpyrifos.

In addition, Sen. Tom Udall (D-N.M.) has sponsored a bill (S. 921) that would ban the chemical nationally. The bill has drawn cosponsors from 13 Democrats and Sen. Bernie Sanders (I-Vt.).

With previous pesticide bans, such as DDT, Earthjustice's Goldman says the EPA allowed companies every chance to make their own decision to discontinue a problematic pesticide.

"And given the decisions by big agricultural states like California and New York, the writing is now officially on the wall for chlorpyrifos," she said.

The case is *League of United Latin Am. Citizens v. Wheeler*, 9th Cir. en banc, 4/19/19.

Politico

EPA keeps chlorpyrifos on fields, for now

<https://subscriber.politicopro.com/newsletters/morning-agriculture/2019/07/epa-keeps-chlorpyrifos-on-fields-for-now-689613>

By LIZ CRAMPTON

— The EPA decided not to ban chlorpyrifos, marking the latest chapter in a decadeslong effort by environmental groups to compel the federal government to prohibit the pesticide that some science shows causes neurological damage to children.

— USDA is not backing down despite intense criticism from Democrats on Capitol Hill, who believe that the administration is weakening and undermining science at the department.

— Russia and China are looking to expand their soybean trade relations in the face of dropping U.S. soybean exports to China.

A message from Farm Credit:

700+ farmers and ranchers will travel to Washington July 23-24. Farm families, including pecan farmers in Texas, cattle ranchers in North Carolina and rice farmers in California, will meet with Congress to share how Farm Credit is fulfilling its mission to support rural communities and agriculture. [Learn more](#)

HAPPY FRIDAY, JULY 19! Welcome to Morning Ag, where your host is distressed by the new “Cats” movie trailer. Send tips to lcrampton@politico.com and @liz_crampton, and follow us @Morning_Ag.

DRIVING THE DAY

EPA KEEPS CHLORPYRIFOS ON FIELDS, FOR NOW: The agency announced Thursday that farmers can continue to use chlorpyrifos, rejecting a request from environmental groups to ban the pesticide that research has linked to causing brain damage to children, your host reports.

After reviewing a petition by the organizations, EPA determined the scientific evidence isn’t strong enough to justify removing the pesticide, which is developed by Corteva, from the market.

“For more than 50 crops, chlorpyrifos is the only line of defense and a cost-effective crop protection tool for farmers,” Agriculture Secretary Sonny Perdue tweeted Thursday. “We appreciate the @EPA’s support of American farmers and producers in its commitment to fact-based regulatory oversight of crop protection tools.”

Speeding up review: An EPA spokesperson said the issues environmental groups raised will be addressed through the agency’s review of chlorpyrifos’ registration, which will be expedited “in response to requests from the public.” That review “should be completed well before the 2022 statutory deadline.”

The groups behind the court order blasted Thursday’s announcement.

“By allowing chlorpyrifos to stay in our fruits and vegetables, [President Donald] Trump’s EPA is breaking the law and neglecting the overwhelming scientific evidence that this pesticide harms children’s brains,” said Patti Goldman, an attorney for Earthjustice.

What’s next? If environmentalists continue their push, which is all but certain, the dispute is bound to end up back in court. EPA will likely need to explain again why it doesn’t believe the scientific evidence for banning chlorpyrifos is valid.

USDA STICKS TO ITS GUNS ON RESEARCH CONTROVERSIES: Scott Hutchins, USDA’s deputy undersecretary for research, education, and economics, defended the Trump administration’s approach to agricultural research amid harsh criticism from Democrats on the Senate Agriculture Committee on Thursday.

Several attacked the department for abruptly moving the Economic Research Service and the National Institute of Food and Agriculture — which is expected to result in mass attrition — and for not publicly promoting its own scientific findings and work on climate change.

USDA's secret climate science plan: After POLITICO reported Thursday that USDA officials had suppressed a sweeping plan for studying and responding to climate change, Hutchins told the committee the department never intended to make the report public, but added he had "no problem" with it being released.

Several USDA agencies contributed to the 33-page, multiyear plan, which outlines how the department should help agriculture understand, adapt to and minimize the effects of climate change. It acknowledges climate change is already affecting farmers and ranchers as well as forests.

Wanting it both ways on climate: Hutchins dodged specific questions from Senate Agriculture ranking member Debbie Stabenow about USDA's public communication of its climate work, but insisted the research is ongoing.

"The climate work... is expansive and robust," Hutchins said. He correctly noted that hundreds of climate-related studies have been published by USDA scientists in scientific journals — something that hasn't been in dispute.

However, USDA has largely stopped publicly acknowledging this work in press releases, blog posts, social media and other platforms. Brush up on Helena Bottemiller Evich's deep dive on climate science studies being buried at USDA.

Pros: Read a transcript of the hearing.

ERS UNION NEGOTIATIONS KICK OFF: Agriculture Department officials and labor representatives today will start negotiating with the ERS union. Union leaders, who are opposed to moving the agency to Kansas City, are attempting to win some benefits for employees that either plan to relocate or decline to move.

The talks start off with USDA having already rejected all of the union's requests. The American Federation of Government Employees, which is representing ERS along with NIFA, last month asked for 11 specific demands related to the relocation, such as permitting employees to telework for one year or having USDA pay for certain relocation costs.

JOIN US IN THE NEWSROOM! WE'RE HOSTING AN EVENT ON DIVERSITY IN JOURNALISM & AG: POLITICO and Minorities in Agriculture, Natural Resources and Related Sciences are teaming up for a unique event next week on how the fields of journalism and agriculture are trying to make their workforces more diverse and inclusive.

The details: The event is at 6:30 p.m. on July 25 in our Rosslyn, Va., newsroom. We'll kick off with a panel discussion followed by a reception. Light refreshments will be served.

A conversation with journalists & ag pros: Our speakers include POLITICO reporters and business leaders Eugene Daniels (Video), Sabrina Rodriguez (Pro Trade) and Terrell Mizell (Talent acquisition) as well as Karl Binns, lead development officer for the School of Agricultural and Natural Sciences at the University of Maryland Eastern Shore (MANRRS president), and Alexis Doon, a student studying agriculture with a pre-veterinary medicine concentration at UMES (MANRRS regional undergraduate vice president).

RSVP and get more details.

American energy is being reinvented in many ways. Learn about the benefits, costs, and impacts of mass electrification in America. What are the policy and regulatory concerns that need to be addressed? Join POLITICO on Thursday, July 25th at 8:00 AM to find out. RSVP.

TRADE CORNER

RUSSIA, CHINA LOOK TO EXPAND SOYBEAN TRADE: As U.S. soybean exports to China have plummeted amid the trade war, Beijing has turned to other countries to fill its demand and diversify its supply chain. Now China and Russia are looking to "deepen trade in soybeans and other agricultural products," according to Chinese Commerce Minister Zhong Shan, reports the South China Morning Post, a POLITICO partner.

Presidents Xi Jinping and Vladimir Putin last month agreed to increase their bilateral trade from \$107 billion in 2018 to \$200 billion a year. The closer agricultural ties come as both China and Russia are facing significant tension with the U.S.

But, but, but: It's unlikely Russia will be able to replace U.S. soybeans in the long run, said He Yuxin, a soybean analyst at Sublime China Information in Shandong.

Tele-trade talks: Trump's top negotiators held a phone call with Chinese trade officials for the second time since Trump and Xi agreed to a ceasefire last month. Treasury Secretary Steven Mnuchin has said that he and U.S. Trade Representative Robert Lighthizer could travel to Beijing for in-person talks if their chat this week was productive. Pro Trade's Doug Palmer has more.

PFAS

Bloomberg Environment

New Hampshire Slashes Amount of 'Forever' Chemicals Allowed

<https://news.bloombergenvironment.com/environment-and-energy/new-hampshire-slashes-amount-of-forever-chemicals-allowed>

Adrianne Appel

New Hampshire will impose some of the lowest limits in the nation on fluorinated "forever" chemicals in drinking water starting this fall.

The new limits will allow a fraction of the amount of per- and polyfluoroalkyl substances (PFAS) in drinking water and groundwater than what is considered safe by the U.S. Environmental Protection Agency.

New Hampshire's rules will take effect Oct. 1 and apply to four types of the PFAS chemicals. Lawmakers approved them July 18.

These chemicals have been used for decades in nonstick coatings and firefighting foam. They're often called "forever" chemicals because they persist in the environment and can accumulate in the body. PFAS chemicals have been detected in water systems nationwide and been linked to thyroid issues and cancer.

The EPA has issued a health advisory but hasn't set enforceable limits on the chemicals. States have begun to impose their own rules while calling on the EPA to act.

Tougher Limits

The New Hampshire limits are far stricter than the EPA's and are designed to protect the health of residents, according to the administration of Gov. Chris Sununu (R).

The state's Department of Environmental Services finalized the rules June 28. The new limits are 12 parts per trillion of perfluorooctanoic acid (PFOA); 15 parts per trillion of perfluorooctanesulfonic acid (PFOS); 11 parts per trillion of perfluorononanoic acid (PFNA); and 18 parts per trillion of perfluorohexanesulfonic acid (PFHxS).

In its health advisory, the EPA recommends no more than 70 parts per trillion of PFOA and PFOS, individually or combined.

New York has a limit of 10 parts per trillion of PFOA, and has proposed a ban on PFAS in firefighting foams. Michigan has proposed a limit of 6 parts per trillion of PFOA.

New Hampshire's limits will apply to public drinking water systems serving 25 or more people at least 60 days a year. If a system were found to exceed the PFAS limits, it would have to provide clean water and take remedial action. The rules also apply to treated and untreated wastewater that is discharged into groundwater.

Detected in Wells

High levels of PFAS were detected in private drinking water wells in New Hampshire and Vermont in 2016 and traced to a former manufacturing plant in Bennington, Vt. now owned by Saint-Gobain Performance Plastics.

Both states have embarked on broad statewide testing for the chemicals, and both have filed suits against major manufacturers, including 3M Co. and DuPont, that used PFAS chemicals.

Saint-Gobain is aware of the new PFAS rules, spokeswoman Lia LoBello said. The company has connected 540 properties in New Hampshire to municipal water lines and taken other remedial actions in the state, LoBello said.

Environmental organizations hailed New Hampshire's lower limits. But some companies and business groups have expressed concern the rules would be costly to implement.

"With the federal government dodging its responsibility on this critical issue, real action on the state level is the only way to combat this crisis," said Meredith Hatfield, a senior attorney with the Conservation Law Foundation, an environmental group.

The Business and Industry Association of New Hampshire was disappointed with lawmakers' approval of the rules, which set much much lower limits than originally proposed by the Sununu administration, according to Jim Roche, its president. The industry group wanted more time to review the final rules and an opportunity to understand "the science and assumptions" used to arrive at the new, lower levels, Roche said.

Cannabis

Bloomberg Environment

States Want Pot to Grow Greener as Legal Cannabis Expands

<https://news.bloombergenvironment.com/environment-and-energy/states-want-pot-to-grow-greener-as-legal-cannabis-expands>

Brenna Goth, Tripp Baltz

As more states legalize recreational and medical marijuana, they're confronting the reality that cannabis production involves using huge amounts of pesticides, energy, and water, while generating tons of plant and packaging waste.

The result is a patchwork of air, water, pesticide, and waste regulations for the industry across dozens of states, even as the substance remains illegal at the federal level.

States like Michigan, where the Marijuana Regulatory Agency will begin accepting business licenses in November, have adopted rules on issues like industrial wastewater, water resources, and land management for cannabis growers. Illinois, which legalized recreational marijuana this year, will factor environmental planning—including conservation and efficiency efforts—into its scoring of cultivation center applications.

Colorado is tweaking some elements of its marijuana environmental and sustainability regulations after becoming the first state to allow recreational marijuana use in 2014.

And New Mexico, where decriminalization took effect July 1, just launched a committee to work through environmental and other aspects of the legalization of recreational pot in advance of the state's next legislative session. New Mexico's focus on climate change and water issues will likely figure into the proposal that emerges, said James Kenney, secretary of the state's Environment Department.

"We would want to make it the least footprint for producing as possible," Kenney said.

Among other industry aspects, the department would regulate the safety of commercially-produced food with THC—the psychoactive compound that gives marijuana users a high.

Waste, Water Use Weighed

Expanding or establishing a marijuana industry raises resource questions for states: What land will be used for production? Where will water to grow the crop come from? What to do with the waste?

Pollutants include pesticides, fertilizers, and solvents, while indoor marijuana production can be energy intensive. Legal cannabis cultivation uses enough electricity annually to serve 92,500 homes for a year—a figure that’s expected to grow, according to cannabis industry analytics firm New Frontier Data.

Analysts have also attempted to measure the cumulative environmental impacts of illegal and state-licensed cannabis cultivation.

Total 2017 combined energy consumption in legal and illicit growing was estimated at 4.1 million megawatt hours, roughly equal to the electricity generated by the Hoover Dam, according to New Frontier Data’s October 2018 report.

Data Tracking

The Colorado Department of Public Health and Environment is developing a tracking system for environmental data, including waste produced from the industry, and water and energy used.

In Denver, electricity use from cultivating cannabis and manufacturing infused products jumped an average of 36 percent per year from 2012 to 2016, according to a 2018 Denver Department of Public Health and Environment report.

The legislature approved a measure last year to relax a rule requiring cultivators to blend cannabis plant waste 50-50 with non-marijuana waste. The original aim was to prevent people from being able to recover and reuse marijuana, but it resulted in a “doubling of waste going to landfills,” said Kaitlin Urso, an environmental consultant for the state department.

The department is also studying the cannabis industry’s impact on air quality, with results expected in March 2020. The extraction process produces volatile organic compounds that form ground-level ozone when they react with sunlight, creating negative health effects.

EPA Silent on Pesticides

In California, cannabis represents a tiny percentage of land and water use, but has a possible impact on small streams, among other issues, said Van Butsic, a researcher at the University of California, Berkeley, and co-director of the university’s Cannabis Research Center. California’s push to legalize cannabis was in part driven by the need to bringing illegal growers into the regulated market to address water and chemical use.

Cannabis plants each need about 6 gallons of water a day, according to a 2018 report from the California Department of Fish and Wildlife Habitat Conservation Planning Branch. That means California growers may divert springs and streams for irrigation, disrupting wildlife, the report said.

Berkeley researchers at the center are now looking at cases where people aren’t entering the legal market.

“We’d like to know if there are barriers that can be removed,” Butsic said.

Marijuana’s prohibition under federal law also affects how states try to build a regulated industry. The U.S. Environmental Protection Agency hasn’t evaluated pesticide use related to the crop.

States like Nevada are left to come up with lists of pesticides that aren't prohibited based on risks to human and environmental health. The Nevada Department of Agriculture hasn't endorsed or recommended any of them, spokeswoman Rebecca Allured said in an email.

Georgia barred the use of pesticides unless certified organic by a handful of licensed growers, under a law enacted this year that allows production and sale of cannabis oil with low levels of THC. California is creating a program that will enforce organic cannabis standards starting in 2021.

Pesticides allowed in Washington are "pretty much natural pest deterrents," Stephanie Davidsmeyer, communications consultant for the Washington State Liquor and Cannabis Board, said in an email. Rules under development will outline mandatory pesticide and heavy metals testing and should be final by late 2020, she said.

Plastic Packaging Criticized

Washington is also revising its marijuana product packaging and labeling requirements, she said. Critics of various state regulations say some of the mechanisms intended to protect the public result in overpackaging that is mostly single-use and plastic.

"They didn't take environmental health into consideration," said James Eichner, co-founder of California cannabis packaging company Sana Packaging that uses materials including hemp and reclaimed ocean plastic.

The company is targeting the most sustainable options for major cannabis packaging types and sees a "sustainability ethos within the industry," Eichner said. It's also time to reconsider some regulations, such whether a non-activated cannabis flower needs to be sold in thick, child-resistant containers, he said.

Compliance with regulations is the top concern, said Michael Markarian, CEO of Contempo Specialty Packaging, a Rhode Island company that produces cannabis packaging. He said labeling requirements can force one gram to be placed in an enormous container.

Contempo is looking to develop packaging that has fewer environmental impacts, and determine what customers are willing to pay for it, Markarian said.

Industry Efforts

The National Cannabis Industry Association is working on a white paper with guidelines for best management practices relating to environmental stewardship and sustainability, with the goal of releasing it later this year, spokesman Morgan Fox said.

"The industry continues to explore ways it can become even more sustainable and environmentally friendly," he said.

The national Cannabis Sustainability Symposium, put on by the Cannabis Certification Council, will convene experts from across the country to focus on the industry's environmental issues. The next symposium will be held Oct. 4 in Denver, with future events planned for Philadelphia, Boston, San Francisco, and Portland, Ore. The council seeks to serve as a standard-holding body for the industry.

Cannabis producers have shown a strong commitment to stewardship and sustainability, said Urso, the Colorado environmental consultant, who previously worked with craft brewers, oil and gas producers, and sand and gravel mining companies.

"I've been extremely impressed by the marijuana industry," she said. "I've never seen a higher adoption rate around best management practices. They've shown such a willingness to do the right thing."

—With assistance from Paul Shukovsky, Keshia Clukey, Alex Ebert, Stephen Joyce, Jennifer Kay, Laura Mahoney, Chris Marr, Andrew M. Ballard, and Emily C. Dooley.

Energy

Greenwire

Refiners: Cutting ethanol mandate won't hurt corn farmers

<https://www.eenews.net/greenwire/stories/1060760983/search?keyword=EPA>

Marc Heller, E&E News reporter

Eliminating federal biofuel mandates wouldn't be the disaster for corn farmers that ethanol advocates predict, a study commissioned by petroleum refiners said.

The study by Energy Ventures Analysis found that doing away with the renewable fuel standard would reduce the percentage of biofuel in gasoline by less than 1 percentage point by 2025, from 10.8% to 10.3%. Because ethanol is cheaper to produce than gasoline, refineries would use it even without a mandate, according to the study.

That suggests Congress could end the program without hurting biofuel markets or corn farmers, the study said.

The study was paid for by a group of merchant refiners that opposes ethanol mandates, the Fueling American Jobs Coalition.

Merchant refiners say they take the brunt of the RFS program's shortcomings because they typically don't blend biofuels themselves and are forced instead to buy renewable fuel credits to show compliance with the program.

"Results presented in this report demonstrate that the RFS mandate is no longer relevant as an energy policy. Better ways to advance these policy goals may exist, but the outdated RFS is not one of them," the study said.

Relying on data from the U.S. Energy Information Administration and other sources, the study's authors said maintaining the RFS would increase the cost of fuel to consumers by \$8 billion by 2025. The study recommended scaling back aspects of the program to shift away from corn ethanol, arguing that even without the mandate, farmers will find biofuel markets for that crop, the main source of ethanol.

One option, EVA said, is to eliminate the conventional biofuel mandate and maintain requirements for biomass-based diesel — but at "moderate levels."

In addition, the authors said, the RFS doesn't appear necessary to establish U.S. energy independence. The federal government projects that the United States will become a net exporter of petroleum and other liquid fuels by 2025, with or without the RFS, according to the study.

The report comes as EPA revisits aspects of the RFS, including a reset of mandated biofuel levels triggered by past RFS waivers approved by the agency. Those waivers lowered some of the required volumes in past years, a condition that calls for a reset according to the RFS law.

Biofuel industry groups continue to press the agency to maintain or boost biofuel volumes, and they've criticized EPA for granting exemptions to small refineries that say the requirements cause economic hardship. Those exemptions have effectively reduced overall biofuel volumes below EPA mandates.

The Renewable Fuels Association has called on EPA to reallocate, to other refineries, the volume of biofuel waived through small refinery exemptions and to do that through a reset rule.

EPA hasn't committed to doing so.

"As a result of these waivers or exemptions from required volumes, many ethanol plants have recently idled, shut down, or announced layoffs," RFA President and CEO Geoff Cooper wrote to EPA in January. "These compliance exemptions have also hurt demand and price for American farmers."

Washington Post

The Energy 202: EPA's new 'no surprises' inspection policy has some critics worried

https://www.washingtonpost.com/news/powerpost/paloma/the-energy-202/2019/07/19/the-energy-202-epa-s-new-no-surprises-inspection-policy-has-some-critics-worried/5d30cea41ad2e5592fc359ca/?utm_term=.c0bec4d7aa7d

By Dino Grandoni

The Environmental Protection Agency will no longer have inspectors drop by power plants and other potential illegal polluters without giving states notice, a move Trump administration critics say will limit the agency's ability to enforce environmental laws.

A July 11 memo from Susan Bodine, the EPA's top enforcement official, to regional administrators spelled out the agency's new "no surprises" policy as an effort to better cooperate with state and local regulators.

"With increased EPA cooperation and transparency, the EPA expects the states to respond in kind," Bodine writes.

The memo is the latest move by President Trump's environmental deputies to vest more power in the states when it comes to ensuring companies are following the nation's clean air and water laws. But the administration's critics say the EPA is helping polluters by deferring to state regulators, who often tread more lightly when dealing with local employers.

Under the new policy, the agency will provide states "with advance notice of inspections" and "will generally defer to a state as the primary implementer of inspections and enforcement." Bodine also asked regional offices to avoid inspections that overlap with ones states have already conducted within a 12-month time period.

"Taking the element of surprise away from inspections decreases their effectiveness, for obvious reasons," Tim Whitehouse, executive director of Public Employees for Environmental Responsibility and a former EPA enforcement attorney, said in a statement. "I fear that EPA's 'no surprises' posture masks a 'see no evil' approach to corporate polluters."

The new policy, however, does not close the door on whether inspections will be a surprise for the companies themselves. But Whitehouse worries state regulators could tip off companies about ones that are coming.

"Some states are more cooperative with industry, do not conduct or want surprise inspections in their states, or have used EPA's possible surprise inspections as a hammer," Whitehouse said. "Some states do discourage EPA inspections and the possibility that facilities will be notified is a real concern."

Trump officials have defended the agency's approach to law enforcement even as its enforcement numbers have dropped since the president took office. The number of civil cases started and completed in 2018 hit a 10-year low while the amount of money sought through civil penalties plummeted to the lowest average level since 1994 during the past fiscal year.

Testifying before a House Energy and Commerce subcommittee in February, Bodine said the agency has reduced the need for as many annual inspections by becoming better at finding instances of noncompliance.

"Some are judging our work on a narrow set of parameters and then drawing the conclusion that EPA is somehow soft on environmental violators, that the EPA doesn't care about compliance with the law," Bodine told lawmakers. "I'm here to tell you that is absolutely not true."

Science Advisory Committees

Bloomberg Environment

EPA Advisory Board Dispute Ready for Court, Scientist Group Says

<https://news.bloombergenvironment.com/environment-and-energy/epa-advisory-board-dispute-ready-for-court-scientist-group-says>

Porter Wells

The Union of Concerned Scientists wants the First Circuit to overturn a lower court's decision to dismiss its lawsuit challenging the EPA's decision to purge its advisory boards of scientists in receipt of agency grants.

The trial court dismissed the group's suit in March on the grounds that the Federal Advisory Committee Act doesn't define what it means for an agency to have a "fairly balanced" board of advisers. Without a way to parse that phrase, there's nothing for a court to do, the trial judge said.

But FACA defines "fairly" as done "without bias or distortion" in another part of the statute, the Union said July 18 in its opening brief to the U.S. Court of Appeals for the First Circuit.

"When an agency policy has the intended, predictable, and actual effect of distorting scientific committees away from the best available scientists, a lawsuit challenging that policy is justiciable," it said.

The Environmental Protection Agency is fighting on two fronts over how it settles on the scientific data that support its policy decisions. Tensions flared at a House Science, Space, and Technology subcommittee hearing on July 18, where Rep. Eddie Bernice Johnson (D-Texas) accused the agency of refusing to allow its scientific integrity official to testify at the hearing.

The EPA has defended its policy of declining to have grant recipients on its advisory boards as a way to ensure the individuals on the boards don't have a conflict of interest when they render their official opinions.

The Union takes issue with that justification, saying the agency's choice to replace the scientists with officials from the industries it regulates is a FACA violation as well.

The Protect Democracy Project and Jenner & Block LLP represent the Union of Concerned Scientists.

The Hill

Science committee chair threatens EPA over 'stonewalled' answers to lawmakers

<https://thehill.com/policy/energy-environment/453893-science-committee-chair-threatens-epa-over-stonewalled-answers-to>

BY MIRANDA GREEN

Rep. Eddie Bernice Johnson (D-Texas), the chairwoman of the House Science, Space and Technology Committee, said she is "deeply troubled" by the Environmental Protection Agency's (EPA) lack of cooperation with lawmakers in a letter sent Thursday to EPA chief Andrew Wheeler.

Johnson said the EPA's failure to provide requested information to her committee represented an "obstruction of Congress," and she threatened "compulsory measures" if it does not provide previously requested information by July and August deadlines.

"Over the past five months, EPA has stonewalled this Committee — preventing a coequal branch of government from conducting constitutionally-mandated oversight," Johnson wrote.

"I am deeply troubled by this lack of cooperation with our efforts to evaluate a program so vital to ensuring the health and safety of the American people, and this behavior fits into a disturbing pattern of obstruction and disrespect of Congressional authority."

The EPA in a statement said the letter included a number of "inaccurate statements and mischaracterizations." It also said it had made efforts to send officials to the committee to answer its questions.

"The Committee's letter includes a number of inaccurate statements and mischaracterizations, including that of the Agency's interaction with the Committee and Committee staff," the statement from EPA spokesman Michael Abboud said.

"The Agency previously worked with the Committee to provide our top career science official within the Office of Research and Development to testify on the IRIS program."

The IRIS program is the EPA's Integrated Risk Information System, which is at the center of the panel's fight with the agency.

Lawmakers have put the chemical program under a microscope following reports that the agency suppressed a 2017 report outlining the health risks associated with formaldehyde. The program within the EPA is responsible for conducting many chemical risk assessment reports. These reports often underpin federal health protections.

Johnson's committee has been pressing the EPA to explain why in December 2018 it removed formaldehyde and nine other chemical assessments from its program outlook.

"The agency has rebuffed the committee's attempts to understand the prioritization process and how the benefits of eliminating several late-stage chemical assessments, including formaldehyde, outweigh the benefits," Johnson wrote.

Johnson listed four instances where letters had been written to the EPA with questions or requests for briefings with agency officials, to little or no response.

She also cited the committee's March 27 hearing on IRIS, where Kristina Thayer, the head of the program, was requested to testify. EPA instead sent another employee, Dr. Jennifer Orme-Zavaleta, who Johnson said was not involved in certain decisions the committee was keen to learn more about.

"At the hearing it became clear that Dr. Orme-Zavaleta was not involved in many of the decisions at the core of the committee's investigation of the program, and she was not prepared by the agency to answer basic questions about relevant events about the past year," Johnson wrote.

Abboud said Orme-Zavaleta was the EPA's science adviser and principal deputy assistant administrator, and "was capable of adequately informing the Committee on the IRIS program and did so for as long as the Committee members had questions during the Committee's March 27th hearing on the IRIS program."

He accused panel members of mischaracterizing statements Orme-Zavaleta made in her testimony.

"As for the Committee's repeated complaints this week about the Agency's decision on who to provide on behalf of the EPA to testify, it is disappointing that the Committee refuses to acknowledge the extensive qualifications of Dr. Orme-Zavaleta and her ability to speak knowledgeably on all issues within her office and that the Committee continues to insist on dictating to the Agency who they believed is qualified to speak on issues, rather than agreeing to work with the Agency," Abboud said.

He added that Wheeler had agreed to testify in front of the committee on Sept. 19.

Johnson in her letter said EPA's continued attempts to obfuscate details related to the IRIS program amounts to an "obstruction of Congress."

She said the panel wanted by the end of the business day Friday one specific document related to IRIS.

"Your staff in congressional affairs has made every effort to obstruct the committee's oversight, going so far as to attempt to change the substance of the record. At this point, the committee has exhausted all non-compulsory means of conducting oversight over EPA. The agency's obstruction of Congress is particularly disturbing considering the implications of the matter at hand for children's health," she wrote.

Government Executive

EPA Failed to Ensure Outside Advisers Don't Have Conflicts of Interest

<https://www.govexec.com/management/2019/07/epa-failed-ensure-outside-advisers-dont-have-conflicts-interest/158540/>

COURTNEY BUBLÉ

The Environmental Protection Agency failed to follow its own ethics procedures to ensure members of its scientific advisory committees do not have conflicts of interest, a government watchdog found this week.

The Government Accountability Office found that EPA did not adequately vet appointees' financial disclosure forms, nor did staff document their rationale for naming individuals to two key committees that advise the agency on regulatory matters—the EPA Science Advisory Board and the Clean Air Scientific Advisory Committee.

GAO released its report Tuesday at a House Science, Space and Technology Committee panel hearing.

"EPA's inconsistent compliance with its own ethics policy related to advisory committee members raises doubts about the agency's actions," said Rep. Lizzie Fletcher, D-Texas, chair of the Committee's panel on environment during the hearing.

EPA has 22 advisory committees that serve to provide the agency with advice on developing regulations and managing research programs, among other things. As such, EPA's vetting process is supposed to ensure that members of those committees (known as special government employees) are qualified and act in the public interest. In its review, GAO examined documentation—including financial disclosure forms of appointed committee members and data from the General Services Administration's Federal Advisory Committee database—from fiscal year 2017 through the first half of fiscal 2018.

In its review, GAO found that with 57% of the financial disclosure forms filed by individuals selected for the committees, the auditors could not determine if an ethics official had reviewed them within 60 days as required, because the forms were not dated as to when they were received. With 23% of the forms GAO reviewed, auditors found ethics officials had not signed and dated the forms to indicate the filer was in compliance with ethics laws. The financial disclosure forms are part of the vetting process to ensure committee members don't have conflicts of interest. EPA attributed this incomplete documentation to a lack of staffing.

"Until EPA's Ethics Office evaluates the quality of financial disclosure reviews of [special government employees] as part of its periodic review of its ethics program, it will not have reasonable assurance that it will address noncompliance with federal ethics requirements and prevent conflicts of interest on its advisory committees," said Alfredo Gomez, a director at the Government Accountability Office's Natural Resources and Environment team who testified at the hearing. He told Government Executive this was the first time GAO did an ethics probe of advisory committees at EPA.

The agency also did not prepare information packets for the committee members selected for the Science Advisory Board and Clean Air Scientific Advisory Committee. These packets, which are called draft membership grids, explain to EPA senior leaders why staff want to include the proposed members and are recommended by the EPA's Federal Advisory Committee Handbook. The agency management requested briefings instead of the packets.

"Unfortunately, over the course of the last two and a half years, we have seen a multi-pronged attack on these committees," said Rep. Miki Sherrill (D-N.J.) during the hearing. She spoke about how former EPA Administrator Scott Pruitt banned some researchers from serving on scientific advisory committees, yet allowed people paid by industries to serve.

The Environmental Protection Agency "generally followed its established processes," according to GAO. The watchdog recommended EPA Administrator Andrew Wheeler direct all officials involved in the appointment process to follow protocol and document their decisions for selecting candidates for committee membership. GAO also recommends the EPA's ethics office review the financial disclosure process to ensure it meets all ethics requirements.

In response to GAO's findings, Donna Vizian, EPA's principal deputy assistant administrator, acknowledged the agency could bolster oversight of the ethics program and said the agency had resolved staffing issues. However, she took issue with the recommendation to document the staff's rationale for selecting advisory committee members and said it was "within the discretion of the EPA administrator" to request briefings instead of the information packets.

Mining

Bloomberg Environment

EPA Wasn't Required to Issue Hardrock Mining Rule: D.C. Cir. (2)

<https://news.bloombergenvironment.com/environment-and-energy/epa-wasnt-required-to-issue-hardrock-mining-rule-d-c-cir>

Peter Hayes, Sylvia Carignan

The Environmental Protection Agency's decision to abandon financial responsibility requirements for the hardrock mining industry will stand, the D.C. Circuit ruled July 19.

The EPA proposed the rule for financial assurance against environmental mining disasters in January 2017, but the Trump administration withdrew it in February 2018.

The Idaho Conservation League, Earthworks, Sierra Club, Amigos Bravos, Great Basin Resource Watch, and Communities for a Better Environment argued that the EPA decision violates the Superfund law.

In its decision not to regulate, the EPA ignored "significant" contamination risks mines pose, Amanda Goodin, staff attorney for Earthjustice, argued on behalf of the League and environmental advocacy groups during oral arguments March 13.

The court's decision "clears the way" for the Trump administration to further cut out protections for human health and the environment, Rebecca Bowe, a spokeswoman for Earthjustice, said in an emailed statement.

But the relevant part of the Superfund law doesn't require that the EPA issue financial responsibility requirements for hardrock mining, the U.S. Court of Appeals for the District of Columbia Circuit said July 19.

Industry Assurances

Hardrock mining refers to the extraction of hard metals, such as gold, copper, iron, zinc, and lead. About 200 facilities would have been subject to the EPA's financial assurance regulation.

The law doesn't specify that the hardrock mining industry is one of the classes of facility requiring financial assurance, the court said.

And the EPA's interpretation of the law as requiring it set financial responsibility regulations based on financial risks, rather than risk to health and the environment, was reasonable, the court said.

The Superfund law states that the EPA must require facilities it identifies as having the highest level of risk of injury to establish and maintain financial responsibility in the form of insurance, surety bonds, or letters of credit.

The statute instructed the agency to identify which classes of facilities for which requirements will be first developed by 1983.

After being sued, the EPA finally announced in 2009 that it would prioritize financial responsibility requirements for hardrock mining.

The agency now has similar decisions for other industries in its rulemaking pipeline, and has already proposed not regulating financial assurance for the electric power sector.

The Sierra Club has received funding from Bloomberg Philanthropies, the charitable organization founded by Michael Bloomberg. Bloomberg Environment is operated by entities controlled by Michael Bloomberg.

Earthjustice represents the petitioners.

Politico

Court sides with EPA in mining financial assurance dispute

<https://subscriber.politicopro.com/article/2019/07/court-sides-with-epa-in-mining-financial-assurance-dispute-3609671>

BY ALEX GUILLÉN

A federal court today upheld the Trump EPA's decision not to require hardrock mining companies to prove they can pay to clean up after themselves.

Nothing in the Superfund law, also known as CERCLA, "mandates the EPA to promulgate financial responsibility requirements for the hardrock mining industry, authorizing the EPA to decline to do so," the D.C. Circuit Court of Appeals ruled.

Superfund authorizes EPA to require industries to provide financial assurance for remediation, though in the almost four decades since the law was passed EPA has never used that power.

Following litigation, the Obama administration proposed financial assurance requirements in late 2016 for hardrock miners, which covers a class of miners including gold, silver, zinc and copper. But the Trump administration ultimately reversed that and set no requirements.

The court deferred to EPA's decision to consider only financial risks from companies being unable to clean up after themselves, not risks to public health or the environment. The court also said environmentalists' challenge to EPA's economic analysis were unpersuasive.

The ruling is a boon to EPA's recent proposal to similarly set no financial assurance requirements for electric utilities. EPA is under a court-ordered deadline to finalize that rulemaking by December 2020. And the agency must consider similar rulemakings in the coming years for petroleum and coal products manufacturers and chemical manufacturers, though this ruling could provide the agency significant leeway to avoid imposing requirements on those industries as well.

Coal mining companies are already required to provide financial assurance under a different federal law.

Greenwire

D.C. Circuit yields to EPA on hardrock mine bonding

<https://www.eenews.net/greenwire/2019/07/19/stories/1060761231>

Jennifer Hijazi, E&E News reporter

The U.S. Court of Appeals for the District of Columbia Circuit is upholding EPA's decision against imposing new financial assurance requirements on hardrock mines under the Superfund law.

In her opinion, Judge Karen Henderson, a George H.W. Bush appointee, said environmental groups, including the Idaho Conservation League, were misinterpreting the statute.

She wrote that concerns about abandoned mine sites do not "undermine the reasonableness of the EPA's decision not to promulgate additional financial responsibility requirements for the entire hardrock mining industry."

Also on the panel reviewing the case were Thomas Griffith, a George W. Bush appointee, and David Santelle, picked by President Reagan.

During oral arguments in March, the judges homed in on deference to agency decisions under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), also known as the Superfund law Greenwire, March 13).

The government sent its top lawyer from the Justice Department's environmental division to argue the case. Jeffrey Bossert Clark said CERCLA gave the president and EPA broad powers of industry regulation.

Environmental groups, represented by Earthjustice attorney Amanda Goodin, argued that EPA's decision was "arbitrary and capricious." She also said EPA was incorrect in its "risk" interpretations.

Further, the groups said, regardless of risk, EPA had a responsibility under CERCLA to require at least some financial assurances for hardrock mining sites.

Greens have for years been pushing for the mandates. In a settlement, EPA under President Obama decided to consider financial assurance requirements for a host of industries, starting with hardrock mining.

But President Trump's first EPA chief, Scott Pruitt, shot down the idea in 2018, saying the rules were "unnecessary" and "would impose an undue burden on this important sector of the American economy and rural America" (Greenwire, Dec. 4, 2017).

Today, the D.C. Circuit found that "the EPA's interpretation is reasonable."

"We defer to the EPA's interpretation that it should set financial responsibility regulations based on financial risks, not risks to health and the environment," said the opinion.

Henderson wrote that EPA's alleged failure to consider the latter risks also does not make its final rule "arbitrary and capricious."

Henderson wrote about the Superfund statute: "Although the provision directs that the EPA 'shall' promulgate financial responsibility requirements for certain 'classes of facilities,' the provision does not specify which classes of facilities."

The agency does have discretion, in the court's view, to determine which types of facilities are up for regulation.

Earlier this month, EPA decided against new financial assurance requirements under Superfund for the electric power industry (Greenwire, July 3).

EPA Staff

The Daily Signal

EPA Administrator Explains What's Changed at the Agency Since the Obama Years

<https://www.dailysignal.com/2019/07/19/epa-administrator-explains-whats-changed-at-the-agency-since-the-obama-years/>

Daniel Davis

For Environmental Protection Agency Administrator Andrew Wheeler, it's important to make sure states—not the federal government—are making the calls on environmental issues when possible. He joins The Daily Signal for an exclusive interview to explain his views on federalism, regulation, and more. Read the interview, posted below, or listen on the podcast:

We also cover these stories:

- President Donald Trump condemns the “send her back” chant from the crowd at his rally, in reference to Rep. Ilhan Omar, D-Minn.
- The House passes legislation to hike the minimum wage to \$15 an hour.
- More kids want to be YouTube stars than astronauts.

The Daily Signal podcast is available on Ricochet, iTunes, SoundCloud, Google Play, or Stitcher. All of our podcasts can be found at [DailySignal.com/podcasts](https://www.dailysignal.com/podcasts). If you like what you hear, please leave a review. You can also leave us a message at 202-608-6205 or write us at letters@dailysignal.com. Enjoy the show!

Daniel Davis: I have the privilege of being joined now in studio by Andrew Wheeler. He is the administrator of the Environmental Protection Agency.

The liberal Left continue to push their radical agenda against American values. The good news is there is a solution. Find out more >>

Administrator, thanks for being here.

Andrew Wheeler: Thank you, Daniel. It's great to be here.

Davis: So you became the acting EPA administrator just over a year ago and were confirmed later, I believe in February of this year?

Wheeler: Yes, Feb. 28.

Davis: OK. Looking back over your full year as a EPA administrator, acting and official, what are a couple of the top achievements that you really look back on and are proud of?

Wheeler: First, it's gone really fast. It's been a very fast year. But getting our major regulation out a couple of weeks ago on the Affordable Clean Energy rule, huge accomplishment. We reorganized our regions, we got that done this spring. But just moving forward on so many different regulatory fronts and improving the overall structure of the agency has just been really gratifying.

Davis: During the Obama administration, a number of states were often frustrated with their relationship with the EPA. Tell us about your approach with states and with governors and how you approach regulatory issues under this administration.

Wheeler: Certainly. We defer so much more to the states. You know the big difference between the Clean Power Plan, which is the Obama regulation and the ACE, the Affordable Clean Energy rule, which was our regulation to address greenhouse gases from the electric power sector, is that we rebalanced it. We gave the authority back to the states.

What the Obama administration tried to do was make all of the energy decisions at the federal level about what types of fuel different states should be able to use. That's not the role of the federal government. That's not the role of the EPA.

That authority has historically been with the states and the state public utility commissions. So we have rebalanced that and returned that authority back to the states. And that's just one example, but we're doing that in all of our regulatory efforts.

Davis: One of those key regulatory issues was the Waters of the United States rule originally proposed under the Obama administration. And earlier this year, your agency proposed a revised version of that rule, which determines what counts as an official body of water subject to federal regulation.

Tell us about the EPA's thought process in revising that rule.

Wheeler: Sure. First of all, the Obama regulation, as soon as it was issued, was stayed by a number of courts. In fact, today we have the Obama regulation, I believe, in effect in 22 states, and the 1980s definitions are enforced in 28 states. So it's really a patchwork approach right now.

What we did is we took a step back, we took a look at the Clean Water Act, we took a look at the Supreme Court decisions. And we put forward a proposal, the Waters of the U.S. proposal, that we believe follows the law.

The second and the overarching guiding principle for us on the Waters of the U.S., the new definition that we have, which we'll be finalizing by the end of this year, is that the property owner should be able to stand on his or her property and decide for themselves whether or not they have federal waters on their property without having to hire an outside attorney or consultant to do that for them.

And then third is we're also for the first time acknowledging the fact that some waters are protected by the states and other waters should be protected by the federal government. We don't have to overlap on every single waterway.

If the United States were to walk away from regulating water tomorrow, which we're not going to, but if we were, most waterways would already be protected under state law. So we're recognizing that for the first time.

Davis: The EPA uses a lot of scientific models to develop its regulations when it comes to defining waters of the United States. Obviously, there's been controversy in recent years over how to define that and the subjectivity of what is a water of the United States. Is that primarily a legal question or is it really more dictated by science?

Wheeler: It is both. But if you go back to the original Clean Water Act, it says navigable waters are waters in the United States. So what we did is we clearly defined what is a water in the United States, but we also define what is not a water of the U.S.

For example, we clearly defined that agricultural ditches are not waters of the U.S. And I don't think Congress intended a ditch next to a row of corn should be considered a water of the U.S. But there are certainly some scientific questions at play as far as adjacency to navigable waters for wetlands, other water bodies such as that.

So science does play a role in it, but I believe the Obama administration took it to an extreme on the science side instead of taking a look at what is truly a navigable water. And according to the supreme courts, what are the waterways that the United States government should be stepping in.

Davis: The EPA in the past has often developed major rules using science that the public didn't have access to, wasn't able to publicly evaluate.

What have you, under your leadership, been doing to increase the transparency so that the public can have access to the science that's being used as the basis for these regulations?

Wheeler: We put forward a science transparency proposal, and we are working to finalize that this year.

What that does is require that any of the science that the federal government, the EPA uses for our regulatory purposes should be made available to the public. So the underlying research, the underlying data. We believe that transparency will lead to better regulations.

I started my career at the EPA working in the Toxics office on TRI, the Toxics Release Inventory, which was a Community Right-to-Know Act. And I really do believe that the public has a right to know the information that the government is using to design their regulations.

So by putting the science out there and allowing anybody to take a look at how we're making our regulatory decisions, I think will lead to better regulations, better regulatory decisions, and decisions that will have better support with the American public.

Davis: And will that rule pretty much apply to all regulations? They all have to be based on publicly available data?

Wheeler: Yes. There will be some exceptions. Certainly, for example, some health studies data that involves people. We have to follow the HIPAA requirements, so that people's individual health information is not released to the public. But that can be masked, and it can be taken care of and still be released in a meaningful manner so that people can understand what we're using.

Davis: But you also recently issued a memo directing EPA offices to issue new rules regarding how they perform cost-benefit analysis on regulations. Can you explain that and what's the goal of that?

Wheeler: Again, it's part of transparency and making sure the American public understands what we're basing our regulations on and why.

To the heart of that is the cost of the regulations. We owe it to the American public to explain to them what are the costs of a regulatory action and what are the benefits.

What we did last year is we proposed a regulation that would have applied cost-benefit analysis across the board to all of our regulations. We took a look at that, we took comments on it, and we decided the better approach would be to require that under each of our statutes because each statute has a different scientific basis, each statute has a different regulatory basis.

We're going to move forward first under the Clean Air Act, and we'll have that done by the end of this year. We will propose a new regulation that will require cost-benefit analysis to be done for all the Clean Air Act regulations, and then we will go statute by statute across all of our major statutes under the EPA jurisdiction.

Davis: Great.

In the past, the EPA has also sometimes justified new and costly rules by appealing to co-benefits, which, for our listeners, is essentially indirect benefits that don't have much to do with the original purpose of the regulation but are used to justify it. It's something that some of our Heritage experts here have written on a lot.

How do you perceive this issue of co-benefits? And what's the EPA doing now to address any past abuse?

Wheeler: First of all, I think it's fine for us to take a look at the co-benefits and explain what co-benefits might be, but that should not be the basis for a regulatory decision.

What the Obama administration did in particular on the Mercury Air Toxics regulation was the benefits that they calculated came from particulate matter, and ... I believe it was 98% or 99% of the benefits for the mercury regulation were from addressing particulate matter.

We already have regulations addressing particulate matter, and we regulate particulate matter or PM down to the that is safe for people. What the Obama administration did was go beyond that, and then use those benefits to justify their standards for mercury.

The Supreme Court actually remanded that regulation back to the agency and said, "Your cost-benefit analysis is suspect. You need to take a second look at that." Which is what we're doing and redressing the mercury standards, and we should have our final regulation out on the Mercury Air Toxics rule by the end of this summer.

And what we're doing is following what the Supreme Court told us to do, which is to do a more balanced approach of looking at the cost-benefit analysis and make sure that we are attributing the benefits of the regulation to the purpose of the regulation and I think we owe that to the American public.

Davis: Yeah.

Well, looking ahead to the rest of the year and next year, are there any other big items that come down the pike that folks should be looking out for from the EPA?

Wheeler: Sure. We will be finalizing our CAFE standards for the automobile sector in the next couple of months, we will finalize our Waters of the U.S. regulation by the end of this year, and we will be proposing a new regulatory program for lead and copper pipes.

This is for the drinking water, and this is what happened in Flint, Michigan, with the lead in Flint, Michigan. So we are updating that regulatory approach. It hasn't been updated in over 20 years.

We'll be proposing a new regulation that will help identify the lead pipes around the country that need to be replaced more quickly, and also take a look at mandatory testing for schools and day care centers and that proposal should be out sometime over the next month.

Davis: You mentioned the CAFE standards for vehicles. ... I know California has played a big role in trying to set standards. Tell us about that, and how have you been pushing back on California?

Wheeler: First of all, the attorney general from Louisiana, Attorney General [Jeff] Landry, said that CAFE does not stand for the California Assumes Federal Empowerment. The federal government should be setting the CAFE standards for the entire country, not the state of California.

Now, we worked with California. We tried to negotiate with them a standard that would be appropriate for the entire country and that California could live with, and they just will not negotiate with us. They just will not come to the table. It's really a shame.

And they've been in the press criticizing everything that we do instead of coming forward with a plan that would work.

[California's] ... standard just looks at CO2 from cars. We believe that there are other public policy goals that should be addressed under a CAFE standard, including public safety and the lives of our citizens.

Our proposal—as we proposed last year—will actually save American lives. It will reduce the price of a new automobile by \$2,300. Right now, the average age of cars on the road is 12 years old, it used to be 8.

Older cars are less safe, and they're worse for the environment. So by reducing the price of a new car, we believe that we [will] get more people buying newer cars—getting the older cars off the road—safer vehicles, better for the environment. And [it] will be a better program for the entire country.

Greenwire

Policy aide heads to utility

<https://www.eenews.net/greenwire/stories/1060761195/search?keyword=EPA>

Kevin Bogardus, E&E News reporter

Daisy Letendre, a senior EPA official, is leaving the agency.

Letendre, a senior adviser for policy and strategic communications at the agency, is joining FirstEnergy Corp. She will be part of the Akron, Ohio-based electric utility giant's federal government affairs team in Washington, D.C.

Letendre's last day at EPA is today, according to a farewell email sent to colleagues and obtained by E&E News.

"Serving this Administration and Administrator Wheeler has been an immense pleasure; the past two years have truly flown by," Letendre said in the email sent yesterday.

"I am grateful to have played a small role in all that has been accomplished at EPA so far under this administration, and I am excited to see all that will continue to get done," she said.

At EPA, Letendre worked out of its policy shop. She helped handle the Smart Sectors program, an effort to interact with industry regulated by the agency. The program has held dozens of meetings with business groups since its launch in October 2017 (Greenwire, Aug. 31, 2018).

"Because we're located in the Office of Policy, we're able to take a cross-media view of the agency. As the program has evolved, we've sort of hit our stride a bit. We see ourselves at a minimum as an ombudsman within the agency," Letendre said last year about Smart Sectors.

She came to EPA in June 2017 as part of a network of former aides to Sen. Jim Inhofe (R-Okla.) working at the agency, including Administrator Andrew Wheeler and Chief of Staff Ryan Jackson. Letendre held several press positions for Inhofe, including communications director for the Senate Environment and Public Works Committee when the senator was the panel's chairman.

"I want to thank Daisy for her service to the Agency and for launching and leading the new Smart Sectors program," Wheeler said in a statement.

"She is a true professional and her leadership helped advance this administration's regulatory reform agenda and improved how the agency works with the regulated community to ensure sound environmental policies," he said.

FirstEnergy has strived for influence in energy policy in recent years. The company has pushed the Trump administration for government support of coal and nuclear power plants. Its CEO has met with administration officials as part of that effort.

The utility has also reported lobbying EPA as recently as the first quarter of this year, according to lobbying disclosure records. Areas lobbied on by the company include the Affordable Clean Energy rule — EPA's replacement regulation for the Obama-era Clean Power Plan, which was designed to curb power plants' carbon emissions — as well as Clean Water Act issues, including the redefined Waters of the U.S. rule proposal.

Records show Letendre was hired in an "administratively determined" position at EPA and remained so during her time at the agency, an EPA official confirmed to E&E News.

That designation means she was not technically a political appointee and did not have to sign President Trump's ethics pledge, which would have limited her lobbying interactions with her former agency. She is bound by ethics law from representing her new employer to the government on specific matters she worked on while in federal service.

Letendre said she didn't know yet what she will work on at FirstEnergy, where she starts Monday.

"Regarding FirstEnergy Corp., my roles and responsibilities are yet to be determined," she said in an email to E&E News.

Waste

Greenwire

Wheeler objects to limits on sending U.S. waste abroad

<https://www.eenews.net/greenwire/stories/1060761193/search?keyword=EPA>

Sean Reilly, E&E News reporter

EPA Administrator Andrew Wheeler is opposing a recent international agreement that could limit the ability of the United States and other developed nations to send some types of plastic trash abroad.

Under recently adopted amendments to what is known as the Basel Convention, the governments of importing nations would first have to grant permission to accept the waste.

Wheeler formally objected to that requirement in a recent letter, telling the Organisation for Economic Co-operation and Development (OECD) that it could hurt the recycling trade and thus lead to more plastic scrap being sent to landfills or incinerated.

The OECD, a group of 36 developed nations, includes the United States, Canada and most European countries. The U.S. is the only member to contest the new agreement, according to the Basel Action Network, an advocacy group that supports the added controls.

Wheeler's objection "will now trigger a lengthy debate within the OECD with a view to reaching consensus," the network said in a news release earlier this week. Absent an agreement, the United States "can block the rest of the OECD from incorporating the new global listings."

"It is clear that the U.S. is positioning itself further as a country that intends to solve its waste problems by dumping them on their global neighbors," Jim Puckett, the network's executive director, added in a statement. "And these are often unsuspecting, weaker, and at times, impoverished countries."

Wheeler's objection was previously reported by trade publications and Politico. EPA press staffers did not immediately respond to a request for additional comment this morning.

In his letter, Wheeler said that OECD countries have high environmental standards, accompanied by the ability "to manage waste in an environmentally sound manner."

But the new control requirements apply to plastic scrap that is "dirty" or mixed with other waste and thus difficult to recycle, according to the Basel Action Network. China, once the top destination for recyclable plastic trash, now largely refuses to accept it.

The Basel Convention is an international treaty dating back to the late 1980s originally intended to govern the shipment and disposal of hazardous wastes around the world; the United States is not among the 187 nations that are now parties to the agreement. The new amendments were adopted this spring.

On its website, the convention describes plastic litter, particularly when it ends up in the oceans, as a global environmental problem. Because plastic is slow to degrade, much of it "will persist for decades and probably for centuries, if not millennia," according to the site.

Greenwire

Wheeler announces \$2M for cleanup projects

<https://www.eenews.net/greenwire/stories/1060760985/search?keyword=EPA>

The head of EPA has announced a \$2 million grant program to clean up the shorelines and waters of the Great Lakes.

EPA Administrator Andrew Wheeler during an appearance today in Cleveland says the grants will be available to state and local governments, nonprofit groups and universities for cleanup programs.

Wheeler says removing trash from U.S. waterways is an EPA priority.

The program is part of the EPA's Great Lakes Restoration Initiative. It will fund up to a dozen projects, with the largest amount set at \$500,000.

EPA is seeking projects that will address trash on beaches, shorelines, harbors and rivers. It will also fund litter prevention and education programs.

Grant applications will be accepted starting in October, with awards announced in February. — Associated Press

Air

Breitbart

EPA: Air Quality Improvement Report Is an 'Untold Environmental Success Story'

<https://www.breitbart.com/politics/2019/07/18/epa-air-quality-improvement-report-is-an-untold-environmental-success-story/>

by Penny Starr

The Environmental Protection Agency (EPA) released its annual "Our Nation's Air" report on air quality on Wednesday, which documents how air quality continues to improve across America, dating back to the amended Clean Air Act of 1970.

"One of America's great but untold environmental success stories is that we have made — and continue to make — great improvements in our air quality, thanks largely to state and federal implementation of the Clean Air Act and innovation in the private sector," EPA Administrator Andrew Wheeler said in the announcement of the report's release.

"Emissions of all key air pollutants dropped between 2016 and 2018, and lead and sulfur dioxide concentrations dropped by double-digit percentages during the same period," Wheeler said.

advertisement

"The U.S. is a global leader in clean air progress, and we've proven that we can protect the environment while growing our economy," he continued.

"The report released [Tuesday] shows that, between 1970 and 2018, the combined emissions of six key pollutants dropped by 74 percent, while the U.S. economy grew 275 percent," the press release announcing the report stated.

Some findings of the report include:

From 2016 to 2018, emissions of key air pollutants continued to decline:

- Nitrogen Oxides (NOx) down 8.7 percent
- Particulate Matter 2.5 (PM 2.5) down 1.9 percent
- Particulate Matter 10 (Including lead) (PM 10) down 1.2 percent
- Sulfur Dioxide (SO2) down 7.8 percent
- Carbon monoxide (CO) down 7.2 percent
- Volatile Organic Compounds (VOC) down 3.3 percent

In addition, average concentrations of harmful air pollutants decreased considerably across our nation between 1990 and 2018:

- Ground-level ozone (8-hour) down 21 percent
- Fine Particulate Matter (annual) down 39 percent (from 2000)
- Coarse Particulate Matter (24-hour) down 26 percent
- Sulfur dioxide (1-hour) down 89 percent
- Nitrogen dioxide (annual) down 57 percent
- Lead (3-month average) down 82 percent (from 2010); and
- Carbon monoxide (8-hour) down 74 percent

"EPA examines long-term trends to track the nation's progress in cleaning the air. Air quality concentrations can vary year to year, even as human-caused emissions continue to decline," the press release stated. "Variations in weather and natural events such as dust storms and wildfires can have an impact on air quality in affected areas."

"As a whole, human-caused emissions of the six common pollutants dropped in 2018, continuing the long-term trend," the press release stated. "Despite this, the report shows that monitors in some areas logged increases in concentrations of particulate matter in the outdoor air, due in part to natural events such as wildfires."

"The increases in these areas had a small, but noticeable, impact on the national average," the press release stated.

But the little attention the media gave to the report does not provide the good news and instead claims the report contains bad news for Americans and air quality.

U.S. News and World Report took data from the report to provide the bad news in an article entitled, “EPA: Unhealthy Air Days Increased in 2018”:

The number of days with air pollution levels high enough to endanger elderly people or children increased last year, according to the Environmental Protection Agency.

The agency’s annual air quality report found that among 35 major U.S. cities last year, there were a combined 799 days when the air was unhealthy for “sensitive” groups, which the EPA said can include the elderly, children, and people with heart or respiratory diseases.

But the media outlet does not note that the increase is slight and that if those statistics are averaged for unhealthy air for sensitive groups in those 35 cities, it would mean poor air quality 22 days per year.

“Still, the trend of lower reported emissions but higher air pollutant concentrations raises questions,” the media outlet reported. “Even 2016 reported 97 fewer unhealthy air days than 2018, and that year was the hottest on record and experienced many wildfires.”

The media outlet linked to a NASA report released earlier this year that it said proved global warming is taking place.

Reuters also led its article by stating, “The number of unhealthy air days in major cities across the United States has risen sharply over the last two years.”

However, the EPA report shows increases in unhealthy days went up only slightly, from 721 in 2017 to 799 in 2018.

In 2012, the year Barack Obama won reelection, the number of unhealthy days was 1,296.

“Air and health advocates said the figures were nothing to celebrate,” Reuters reported.

The media outlet spoke with Paul Billings, senior vice president of the American Lung Association, who “warned that Trump administration efforts to roll back environmental rules to bolster economic growth raised the risk to air and water quality.”